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Air Force Base Conversion Agency  
***BRAC 95 Base Conversion Process***  
***Workshop***

Leasing for Reuse



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## Leasing for Reuse [Block 5]

### OBJECTIVE

- **Provide attendees with an overview of the Air Force process for granting leases**

### OUTCOME

- **Attendees will be familiar with leasing process basics and the types of leases available for reuse at Air Force BRAC installations**



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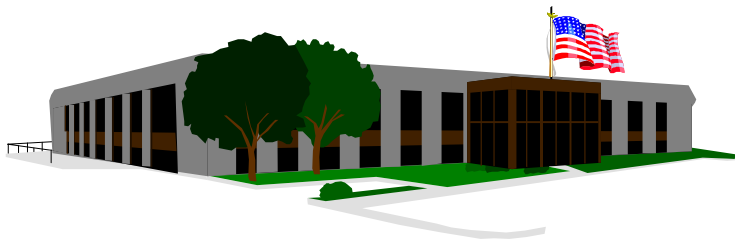
### Quiz—Leasing for Reuse

1. What is the primary difference between an interim lease and a lease in furtherance of conveyance?
2. What is the principal environmental document needed to lease BRAC property?
3. Which of the following does not require a FOSL:  
a) Lease in furtherance of conveyance?      c) Federal agency transfer?  
b) Master lease?      d) Interim lease?
4. True or False. When granting a sublease, the Air Force prefers to negotiate directly with the sublessee, not the LRA.
5. True or False. A sublessee cannot be charged more rent than a prime lessee.
6. True or False. A Master Lease can only be granted after a final disposal decision has been made.
7. True or False. An Air Force interim lease contains a right of first refusal for the lessee to acquire the leasehold by deed.
8. True or False. Sublease proceeds may be used for any purpose, so long as the funds remain within State boundaries.

# Leasing for Reuse

## ■ BRAC Lease Types:

- Interim lease
- Lease in furtherance of conveyance
- Master lease



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**Lease type definitions.** Source: Base Reuse Implementation Manual, Chapter 5

### **Interim lease**

- Generally an interim lease is a short-term lease that makes no commitment to the Lessee for future use or conveyance of title to the property to the Lessee upon its disposal. An interim lease is usually entered into before final disposal decisions are made by the Secretary of the Military Department
- Prior to the completion of the requirements of NEPA, the term of an interim lease may last for up to five years, including options to renew. At the completion of the NEPA process, the lease could convert into a long-term lease or deed transfer. Separate NEPA analyses—as well as air pollution, wetlands, floodplains, historic structures, and other natural and cultural resources determinations and consultations—may be required prior to a decision to lease
- An interim lease must be preceded by an Environmental Baseline Survey (EBS) and by a Finding of Suitability to Lease (FOSL)
- Interim leases will generally terminate at the time that final reuse and disposal decisions are implemented
- Interim leases may be for consideration at or below the estimated fair market rental value for the leasehold
- Capital improvements may be made by the Lessee except where, in the judgment of the Military Department, they will trigger a requirement for an EIS under NEPA

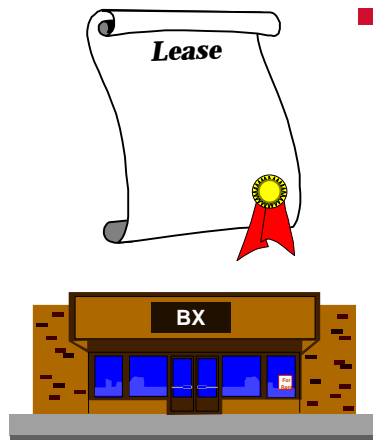
### **Lease in furtherance of conveyance**

- A lease entered into after the Secretary of the Military Department has complied with NEPA and has issued a final disposal decision for the property that provides immediate possession of the property to the entity identified in the disposal decision as the recipient of the property
- Such a lease may be long-term and may be for all or for a portion of the property identified for conveyance to the lessee in the disposal decision
- A lease in furtherance of conveyance must be preceded by an EBS and a FOSL
- A lease in furtherance of conveyance will terminate when a deed transfer can be accomplished

### **Master lease**

- A master lease may be either an interim lease or a lease in furtherance of conveyance. It is a lease that serves as the principal lease instrument for the entire base or for major portions of it.
- Individual parcels and properties may be sublet under the terms of a master lease
- Master leases and each subsequent sublease must comply with appropriate EBS, FOSL, NEPA, and other applicable natural and cultural resources determinations and consultation requirements

## General Leasing Guidance



- **Property may be made available for leasing in the interest of speedy economic redevelopment or other purposes, if it can be done:**
  - **Without interfering with environmental cleanup activities**
  - **In compliance with applicable requirements**
  - **Without adversely affecting the remaining Air Force mission, including disposal-related activities**



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Leasing from the Air Force is somewhat different from leasing in the private sector, because Federal laws and regulations define leasing requirements that must be met by the Air Force and the Lessee.

Following the approval of closure or realignment, property may be made available for leasing in the interest of speedy economic redevelopment or other acceptable purposes, if it can be done:

- Without interfering with environmental cleanup activities
- In compliance with applicable real estate, homeless assistance, environmental and other requirements
- Without interfering with the remaining Air Force mission, including disposal-related activities

Source: Base Reuse Implementation Manual, Chapter 5.2

## Interim Lease



- **Short-term lease that makes no commitment to Lessee for future use**
- **Generally to LRA, unless none exists**
- **Term may be up to five years**
- **Requires EBS/FOSL and NEPA compliance**
- **Consideration (rent) may be in cash or kind**
- **Rent may be for or below fair market value (FMV)**
- **Improvements may be made, subject to certain restrictions**



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### **Interim Leases** (Source: Base Reuse Implementation Manual, Chapter 5.2.2):

- The Military Department will generally lease property for interim use to the LRA. If there is no LRA, or if it is not authorized to lease property, the Military Department may lease the property to either:
  - The local government in whose jurisdiction the property is wholly located, or
  - An appropriate local or State redevelopment agency, as designated by the Chief Executive Officer of the State in which the installation is located
- Requests to lease property directly to other eligible entities will be approved only in exceptional circumstances. Ongoing (e.g., pre-closure approval) leasing programs, such as agricultural and grazing, may be continued
- The Military Departments will use model lease provisions that contain standard terms and conditions. Many terms and conditions of Federal leases are required by Federal law, and by general landlord-tenant “common law” that has evolved over many years. These provisions, including environmental provisions required by Federal law and policy, are essentially non-negotiable. Additional terms and conditions may be added to reflect other site-specific operational, environmental, and natural and cultural resources requirements
- Installation commanders will be consulted regarding the availability of the site for the proposed use and regarding the compatibility of the proposed leasing activity with the ongoing mission. Special lease provisions may be required to prevent interference with base operations or closure or with environmental cleanup activities
- Interim leases may be for a term of up to five years, including options to renew, or until a final disposal decision is made by the Military Department. The following factors are among those that will be considered in determining the lease term:
  - Date of operational closure
  - Proposed use of the property.
  - Compatibility with the base operations before closure
  - Compatibility with the LRA’s redevelopment plan
  - Date of anticipated final disposal decisions and actions by the Secretary of the Military Department
  - Environmental condition of the property

## Interim Lease Discounts

### ■ A lease may be discounted when:

- A public interest will be served as a result of the lease; and
- The FMV of the lease is **unobtainable**, or **not compatible with such public benefit**



### ■ Example discount criteria:

- Lease will provide public benefits
- Job creation or job retention potential of lease
- Lease will foster needed economic development
- Lease will provide economic benefit to Federal Government
- Lease will foster reuse and redevelopment of property
- Lease will protect the property from degradation
- Lease will help maintain property integrity



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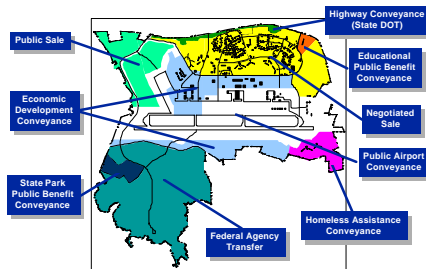
### Leasing Consideration

Consideration for the lease may be in cash or in kind. Services relating to the protection and repair, improvement, restoration and maintenance of the property may constitute all or part of such consideration.

- Rent may be for fair market value. Rent may also be for less than fair market value when:
  - A public interest will be served as a result of the lease; and
  - The fair market value of the lease is unobtainable, or not compatible with such public benefit
- Examples of criteria cited by the DoD *Base Reuse Implementation Manual* that may be used by the Air Force to determine when a public interest will be served as a result of the lease are as follows:
  - The lease will provide public benefits consistent with those that would be derived from the property's transfer under a public benefit conveyance (e.g., for historic monument, education, public health, public park or recreation, non-Federal correctional facilities, port facility, or other sponsored or approved purposes)
  - Job creation or job retention potential of the lease, including the number and quality of the jobs that will be created or retained
  - The lease will foster needed economic development in the community.
  - The lease will provide economic benefit to the Federal Government (e.g., release from protection and maintenance costs)
  - The lease will foster reuse and redevelopment of the property
  - The lease will protect the property from degradation or deterioration.
  - The lease will help to maintain the integrity of the property

Source: Base Reuse Implementation Manual, Chapter 5.2.2

## Lease in Furtherance of Conveyance



- **Used when CERCLA prevents deed transfer**
- **Terminates when deed conveyance can be accomplished**
- **Preceded by an EBS/FOSL**
- **Additional NEPA/other analyses may be required**
- **Must include termination clause (still a lease, not deed)**
- **Tailored to specific situation**
- **Lease should specify terms and conditions applicable to final conveyance**



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### **Leases in furtherance of conveyance** (Source: Base Reuse Implementation Manual, Chapter 5.2.3)

- After the Secretary of the Military Department issues a final disposal decision, applications for conveyance of the property from the LRA or other qualified party and the terms of the conveyance can be negotiated and approved. However, in some cases, immediate conveyance of the property following agreement on the terms is not possible, usually because environmental remedial action obligations under CERCLA § 120(h) prior to deed transfer have not been fulfilled
- In cases where CERCLA § 120(h)(3) prevents an immediate deed transfer, immediate possession of all or portions of the installation may be granted to the ultimate transferee through a lease. This lease may be for a term longer than 5 years, and will terminate as soon as the deed conveying the property is accomplished. The reuse needs of the LRA or other recipients will be considered in determining the term of the lease
- This document is a lease and is not a conveyance of title. It is an agreement that grants an exclusive possessory interest in real property for a period of time for a specified consideration
- The lease must be preceded by an EBS and by a FOSL
- If the proposed use or activity is outside the scope of existing NEPA reviews or the Military Department disposal decision, additional NEPA analysis may be required
- The lease should contain provisions similar to the model interim lease provisions and all of the DoD standard environmental provisions. The lease must include a right of termination for the Government for breach of the material provisions of the lease and a right to terminate when the property is ready to be conveyed. In all cases, the environmental clauses are considered material provisions of the lease
- The lease should also contain express provisions or conditions restricting the use of the property; e.g., the proposed use must be compatible with the disposal decision; major construction and subleasing activities will require Government approval; a change in use must be approved by the Government. The Military Department, as landlord, must oversee the Federal interest in the property
- Because of the unique circumstances of each proposed conveyance, a lease in furtherance of conveyance will be tailored to the specific situation. Additional terms may be added to reflect site-specific operational, environmental, natural and cultural resources, and other requirements. Attention should be given to impacts on wetlands and sensitive habitats
- A lease in furtherance of conveyance should specify:
  - The price, terms, and conditions applicable under a negotiated sale; or
  - The terms and conditions of an EDC; if an EDC is anticipated, then the lease should be tied to an application that has been reviewed and approved
  - The terms and conditions for disposal under alternate authorities

## Master Lease

- **May be either an interim lease or a lease in furtherance of conveyance**
- **Serves as principal lease instrument for the entire base or for major portions of it**
- **Individual parcels and properties may be sublet under the terms of a master lease**
- **Master leases and each subsequent sublease must comply with appropriate EBS, FOSL, NEPA, and other applicable natural and cultural resources determinations and consultation requirements**



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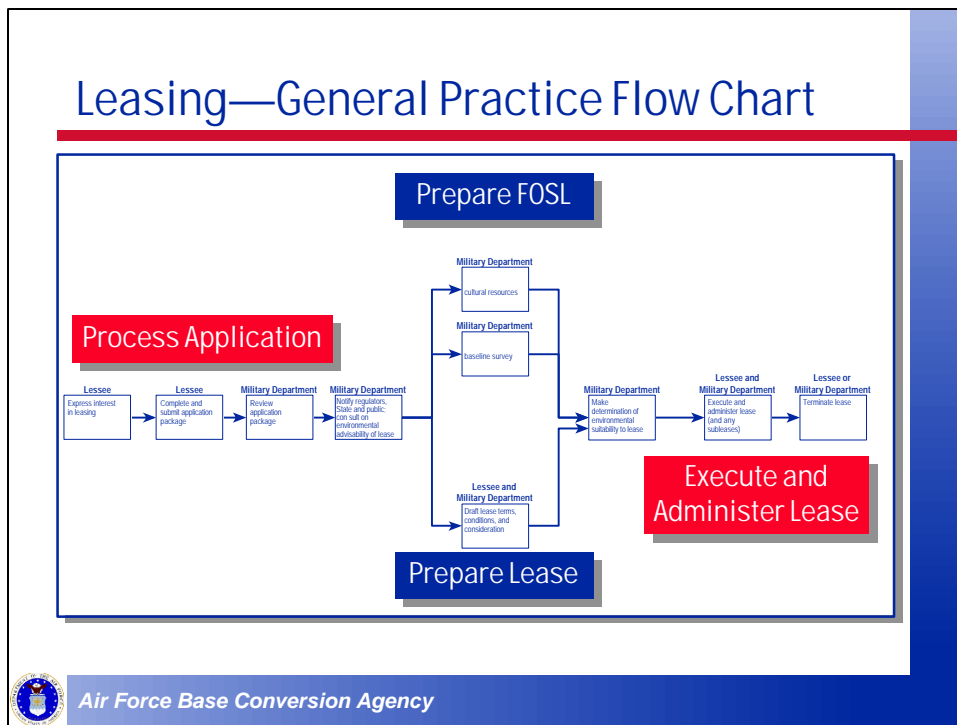
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- Master leases and each subsequent sublease must comply with appropriate EBS, FOSL, NEPA, and other applicable natural and cultural resources determinations and consultation requirements

*Source: Base Reuse Implementation Manual, Chapter 5.1.3*



## Leasing—General Practice Flow Chart



### Leasing General Practice at BRAC Installations

#### Process application

- A party (generally the LRA) expresses an interest in leasing property. The Military Department meets with the Lessee to explain the application process and information requirements
- If the facility is potentially available, the prospective Lessee completes and submits an application (see Manual, Appendix D for model application format)
- The Military Department reviews the application in a timely fashion
- The Military Department either accepts the application for further processing, rejects the application, or requests that it be revised

#### Prepare FOSL (and NEPA/other documentation)

- The Military Department consults with EPA on the environmental advisability of the lease, and makes other required notifications
- The Military Department consults with EPA and other regulatory agencies and determines whether environmental conditions on the property trigger environmental notice requirements or present unacceptable risks to the prospective Lessee, or whether leasing will impact ongoing environmental cleanup efforts. This is accomplished by preparing, if necessary, and reviewing an EBS and issuing a FOSL
- The Military Department determines whether environmental impacts, or impacts on any protected natural and cultural resources, will result from the proposed leasing activity. This is accomplished by completing appropriate NEPA analyses, and by making other necessary environmental determinations/consultations

#### Prepare Lease

- The Military Department and Lessee negotiate the consideration for the lease and draft lease terms and conditions, based upon standard model lease provisions. This may occur concurrently with the preparation of appropriate environmental and natural/cultural resources documents
- The Military Department makes the decision on whether to approve the lease and any reuse restrictions the lease will contain
- The Military Department and Lessee agree on the environmental and physical condition of the property prior to lease execution

#### Execute and Administer Lease

- The lease is signed and required notices are issued
- The LRA submits proposed subleases to the Military Department for their review and approval
- The environmental and physical conditions of the leasehold are reevaluated at lease termination

Source: Base Reuse Implementation Manual, Chapter 5

## Leasing General Practice– Process Application



- **A. Applicant Information**
  - General information
  - Financial background and capability
  - Compatibility with Redevelopment Plan
- **B. Intended use**
  - Subleasing
  - Begin date and term
  - Property and activities description
  - Environmental information
- **C. Operational Requirements**
- **D. Public Benefit Rental Discount**



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### **Leasing General Practice. Applying for an Interim Lease**

The *Base Reuse Implementation Manual* (Chapter 5.3) describes the process for expressing interest and applying for an interim lease.

#### **Expression of interest**

An expression of interest in an interim lease should be in writing and provided to the Air Force. This expression of interest should be submitted to AFBCA. Generally, the Air Force will accept expressions of interest only from the LRA. Any prospective Lessee should direct an expression of interest, preferably in writing, to the LRA. The LRA will provide notice of such expressions of interest to the Air Force. If an interest is expressed to the Air Force, that interest should be forwarded to the LRA.

#### **Initial meeting/application package**

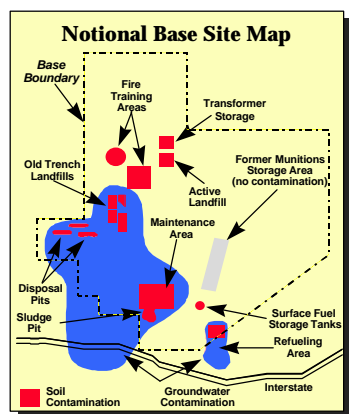
When the Air Force receives an expression of interest, it will first seek the installation commander's concurrence that the facility is available and that the interim use will be compatible with ongoing missions.

The Air Force may also request a meeting with the prospective Lessee, especially prior to the first lease at the BRAC installation. The purpose of this meeting is to:

- Describe the leasing process to the prospective Lessee, including the application procedure, application and processing timetables, and any other pertinent information
- Informally examine the scope of the proposed interim use to determine which environmental and realty issues must be addressed

An accurate and complete application package must be submitted by the prospective Lessee. The application package will be reviewed by the Air Force. The internal review process may result in a request from the Air Force to the prospective Lessee for additional or more accurate information. The prospective Lessee will be notified that the application has been accepted for further processing and of the anticipated schedule for lease approval and execution.

## Leasing General Practice–Prepare FOSL; Meet Other Environmental Requirements



- **FOSL requires EBS**
- **NEPA requirements must be met for all leases**
  - **CATEX, EA/FONSI, EIS/ROD**
- **Natural/cultural resources consultations/determinations must be made, when required**
- **Air quality conformity determinations may be required**
- **Environmental condition report must be prepared**
- **Other requirements**



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### Leasing General Practice. Prepare FOSL; meet other environmental requirements

The following environmental guidance applies to leasing activities:

- NEPA requirements for environmental impact analysis, in accordance with Council on Environmental Quality regulations, must be met for all leases (e.g., by Categorical Exclusion, Environmental Assessment/Finding of No Significant Impact, or EIS/ROD).
- Appropriate natural and cultural resources determinations and consultations (e.g., Secretarial findings regarding wetlands [E.O. 11990] and floodplains [E.O. 11988], Section 106 consultation under the National Historic Preservation Act), and air quality conformity determinations under the Clean Air Act will be completed when required. Appropriate use restrictions, to the extent required, will be included in the lease.
- Consistent with current DoD policy and procedures contained in the Deputy Secretary of Defense memorandum entitled, "Fast Track Cleanup at Closing Installations," dated September 9, 1993 (or most recent version), an EBS and FOSL are required prior to executing a lease. Consistent with this policy, environmental regulators will be notified at the inception of the EBS and provided with copies of workable draft documents as they are available and with the opportunity to participate in on-board EBS reviews.
- A report documenting the environmental conditions identified in the EBS will be prepared and signed by both parties. This report will acknowledge all leasehold conditions identified in the EBS report, as well as any other environmental conditions that may not be specifically identified in the EBS.
- At the conclusion of the lease period, a similar report will be jointly prepared and signed by the Lessee and the Air Force.
- If applicable, an environmental justice analysis will be performed to determine whether the lease will disproportionately impact minority or low-income populations.

Source: Base Reuse Implementation Manual, Chapter 5.2.4

## Leasing General Practice– Prepare Lease (Common Provisions)

- |                                    |                                      |
|------------------------------------|--------------------------------------|
| ■ Use of the premises              | ■ Term of lease                      |
| ■ Termination                      | ■ Consideration                      |
| ■ Notice                           | ■ Authorized representatives         |
| ■ Supervision of the premises      | ■ Applicable rules and regulations   |
| ■ Condition of the premises        | ■ Transfers, assignments, subleasing |
| ■ Utilities                        | ■ Protection of the property         |
| ■ Insurance                        | ■ Right to enter                     |
| ■ Indemnify/hold harmless clause   | ■ Restoration                        |
| ■ Non-discrimination               | ■ Subject to easements               |
| ■ Rental adjustment                | ■ Waste                              |
| ■ Disputes clause                  | ■ Environmental protection           |
| ■ Environmental baseline survey    | ■ Taxes                              |
| ■ Covenant against contingent fees | ■ Officials not to benefit           |
| ■ Accounts and records             | ■ Modification/agreement             |
| ■ No commitments for future use    | ■ Other provisions, as appropriate   |



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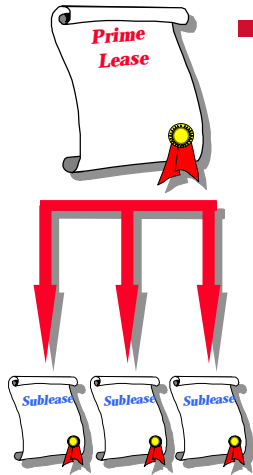
### **Leasing General Practice. Prepare lease.**

Leases at BRAC installations will be prepared after the prospective Lessee has completed and submitted an application package.

The Air Force uses a model lease that contains standard terms and conditions. Many terms and conditions of Federal leases are required by Federal law, and by general landlord-tenant “common law” that has evolved over many years. These provisions, including environmental provisions required by Federal law and policy, are essentially non-negotiable. Additional terms and conditions may be added to reflect other site-specific operational, environmental, and natural and cultural resources requirements.

The above table shows these common provisions. Appendix D of the *Base Reuse Implementation Manual* explains these provisions in greater detail.

## Leasing General Practice– Execute and Administer Lease



### ■ Subleases

- > Air Force will conduct all leasing-related activities with Lessee, not Sublessee
- > Rental value of subleases will be negotiated between Lessee and Sublessee
  - May be for different amount or consideration than prime lease
- > Term of sublease cannot be longer than prime lease
- > Sublessee should not expect to acquire leased property
- > Provisions must be consistent with prime lease, including all environmental provisions
- > In case of a conflict, the prime lease controls



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### **Leasing General Practice. Execute and administer lease.**

Subleasing guidance at BRAC installations:

- The Air Force will generally conduct all leasing-related activities with the Lessee, not the Sublessee(s)
- The rental value of subleases will be negotiated between the Lessee and Sublessee. The sublease rental may be for a different amount or expressed differently than that of the lease between the Air Force and the Lessee ("prime lease")
- Rents from subleases will be applied by the Lessee to the protection, maintenance, repairs, improvements, and costs related to the leased property at the installation, or the entire installation in cases where a substantial part of the installation is leased
- The term of a sublease cannot be longer than that of the prime lease
- Subleases will contain provisions reinforcing that such leases do not convey any right or expectation on the part of the interim user or subtenants to acquire the leased property from the Air Force
- The provisions of a sublease must be consistent with the provisions of the prime lease and must contain all environmental provisions included in the prime lease
- In case of a conflict between the prime lease and any sublease, the prime lease will control

*Reference: Base Reuse Implementation Manual, Chapter 5.2.2*

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